

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 262 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SALIM CHANDBHAI MANSURI

Versus

COMMISSIONER OF POLICE AHMEDABAD.

Appearance:

MR MIG MANSURI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 13/07/98

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India, has challenged the legality and validity of the detention order dated 3.1.1998, passed by the Police Commissioner, Ahmedabad city under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 branding the petitioner as bootlegger within the meaning of sec. 2(a) of the Act.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on the three registered prohibition cases against the petitioner. Two cases out of them, are pending trial, while one case is at the investigation stage. Besides this prohibition cases, the detaining authority has also relied on the statements of four witnesses for the alleged incidents dated 8.12.97 and 18.12.97, wherein the concerned witnesses were beaten on the ground that the concerned witnesses advised the petitioner not to sale the liquor sitting near the shop and on the another occassion, the concerned witness was beaten on the suspicion that he is informant to the police. On both the occassions, many people gathered and started running helter and skelter when the petitioner started running towards them with open knife and the atmosphere of fear and terror was created and, even tempo of life was disturbed. Considering this materials, the detaining authority has recorded a satisfaction that the petitioner is a bootlegger within the meaning of sec. 3(b) of the Act, and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention order is necessary.

This petition is required to be allowed on the first submission advanced on behalf of the petitioner. It is submitted on behalf of the petitioner that even if the allegations made against the petitioner are accepted, the alleged activities of the petitioner cannot be termed as breach of public order. In supported of the submission, a reliance is placed on the decision of the Supreme Court in Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad city, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. IN view of this, the order of detention is vitiated. Applying the principle of the Supreme Court in this case, even if the activities of the petitioner are accepted as true on their face value, the same cannot be termed as breach of public order. The statements of

the witnesses are quite general and vague in nature and they are against the individuals. In view of this, the order of detention vitiates.

In the result, this petition is allowed. The impugned order of detention dated 3.1.1998 is set aside. The petitioner is ordered to be released forthwith, if he is not required for any other lawful reason. Rule made absolute.
